WP(C) 5822/2006
BEFORE
THE HON'BLE MR JUSTICE B K SHARMA

Heard Mr. G. Uzir, learned Sr. counsel assisted by Mr. S.K. Medhi, learned counsel for the petitioner as well Ms. U. Chokraborty, learned counsel for the Railway.

This writ petition has been filed assailing the validity and legality of Annexure-J letter dated 26.10.06 issued by the General Manager, Northeast Frontier Railway (Con) under the signature of Chief Engineer(Con), N.F. Railway, Maligaon rescinding the order of work assigned to the petitioner vide order No. CON/ROB/Rampur/203 dated 16.06.06 w.e.f. 18.10.06. The contract is rescinded invoking clause 62 of the General Conditions of Contract, 1998. By the impugned communication it has also been intimated that the balance work in respect of the contract will be executed at the risk and cost of the petitioner.

On perusal of Annexure-J order dated 26.10.06, it appears that 7 days notice and 48 hours notice as contemplated under the terms of the contract were issued to the petitioner and it was upon his purported failure to make good the default in respect of the work, contract has been rescinded at the risk and cost of the petitioner.

According to the petitioner, the contract has been terminated in a most illegal manner. It is the case of the petitioner that since it was made to carry on the work debarring it from using OPC-53 grade Shakti cement and the respondents insisted upon making use of other brand of cement, the work had suffered and consequently there was violation of the terms and conditions of the contract agreement.

The respondents have filed their counter denying the plea raised by the petitioner. They have also raised the question of maintainability of the writ petition in view of the availability of the Arbitration clause in the contract agreement. It has been stated that if the petitioner is aggrieved by the impugned communication, it will be open for it to invoke the Arbitration clause. They have referred to Clause 64 of the G.C.C. forming part of the contract agreement.

It has been held in a number of cases that if there is Arbitration clause relating to terms and conditions of any contract, it is always advisable to raise the dispute before the authority so that the matter may be referred to the arbitrator. Further, disputed question of fact as has been raised in the writ petition, cannot be gone into by exercising the power of judicial review under Article 226 of the Constitution of India. Since, there is an Arbitration clause in the Arbitration Agreement, it will be open for the petitioner to raise the dispute before the respondents so as to refer the same to the Arbitrator. It is true that the respondents shall also be entitled to refuse reference to the Arbitrator if the dispute comes within the excepted matter. However, this aspect of the matter has not been gone into. As per the affidavit filed by the respondents since there is Arbitration Clause, the petitioner will be entitled to raise his dispute for a reference to the Arbitrator.

In view of the above, I dispose of the writ petition with a liberty to petitioner to raise the related dispute before the authority who in turn may decide for reference to the Arbitrator in terms of the conditions in the contract. It will be open for the petitioner to make a prayer before the authority and the Arbitrator for interim relief.

Writ petition is disposed of. Interim order passed on 24.11.06 stands vacated.